

The 'holiday' debate

Source: *The Hindu Business Line*
July 6, 2009

Author: *Abhishek Goenka, Partner*

It's time for a paradigm shift on this question concerning tech companies, says expert.. It is time for a paradigm shift on the debate about tax holidays for IT (information technology) companies, says Abhishek Goenka, Partner and Leader of the real-estate and IT practice in BMR Advisors. "The discussion really began when some industry czars said that IT companies must start paying taxes. Since then, much has changed," he adds, during the course of a pre-Budget interaction with eWorld.

According to Goenka, the debate has expanded from the primary aspect of the extension of the STP (Software technology Park) tax holiday to a wider issue of whether and how companies can operate from SEZs (Special Economic Zones). The debate, he says, has also acquired a dimension on who should really get the tax holiday — the smaller companies or the larger ones, which anyway have set up multiple SEZ facilities.

Excerpts from the e-mail interview

So, how do we resolve the 'holiday' debate?

There are no easy answers. It is also important to understand the rationale for the tax holidays. In the current scheme, both for STPs and SEZs, the stated law makes it explicit that the tax holiday is only on exports.

Yet not so long ago, when the tax holiday for exporters outside of STPs and SEZs was phased out, the outrage was short-lived and the lobbying for its restoration was not half as noisy as it was for the IT industry.

Therefore, the fundamental question arises: Is the IT sector to be given tax incentives, or are exporters to be incentivised? To my mind, it has to be the former if there is to be any credibility in the demand.

Is the end of the income-tax holiday really the bugbear for the sector?

There are several more critical and economically impactful issues that the industry faces. It is no secret that almost all large global companies with IT operations in India face large tax demands on account of transfer pricing adjustments.

Similarly, whether it is the way the formula for calculating the tax holiday is written in the case of SEZs, or whether it is the interpretation of the meaning of turnover of a company, the Revenue authorities have been consistently collecting more taxes from IT companies than the tax holiday that was granted in the first place.

The story with service tax is no different either. With almost all services under the net, IT companies pay large amounts of service tax which is supposed to be refunded to those that export. Yet, despite several promises, these claims are locked up in needless delays and litigation.

In sum...

Any prudent businessman would prefer certainty of tax costs, rather than an environment where there are incentives on the one hand, and multiple claims and litigation on the other. It is time, therefore, the debate changed its focus to achieving this simplicity and certainty.